

JS 44 (Rev. 12/07, NJ 5/08)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

CRYSTAL DUNSTON

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

NCO FINANCIAL SYSTEMS, INC.

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY - Med. Malpractice <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	SOCIAL SECURITY
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation:

4/15/11

DATE

SIGNATURE OF ATTORNEY OF RECORD

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2075 B. Mather Way, Elkins Park, PA 19027

Address of Defendant: 507 Phidreth Road, Hersham, PA 19044

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. 1629
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

- I, Craig Ther Kimmel, counsel of record do hereby certify:
- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 4/15/11 Craig Ther Kimmel 57100
Attorney-at-Law Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 4/15/11 Craig Ther Kimmel 57100
Attorney-at-Law Attorney I.D.#

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

3 CRYSTAL DUNSTON,)
4 Plaintiff)
5 v.) **Case No.:**
6)
7 NCO FINANCIAL SYSTEMS, INC.,) **COMPLAINT AND DEMAND FOR**
8 Defendant) **JURY TRIAL**
9) **(Unlawful Debt Collection Practices)**

10 **COMPLAINT**

11 CRYSTAL DUNSTON ("Plaintiff"), by and through her attorneys,
12 KIMMEL & SILVERMAN, P.C., alleges the following against NCO FINANCIAL
13 SYSTEMS, INC., ("Defendant"):

14 **INTRODUCTION**

15 1. Count I of Plaintiff's Complaint is based on the Fair Debt Collection
16 Practices Act, 15 U.S.C. § 1692 *et seq.* (FDCPA).
17 18

19 **JURISDICTION AND VENUE**

20 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d),
21 which states that such actions may be brought and heard before "any appropriate
22 United States district court without regard to the amount in controversy," and 28
23 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising
24 under the laws of the United States.
25

1 3. Defendant conducts business and has an office in the Commonwealth
2 of Pennsylvania, and therefore, personal jurisdiction is established.

3
4 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

5 5. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and
6 2202.

7
8 **PARTIES**

9 6. Plaintiff is a natural person residing in Elkins Park, Pennsylvania,
10 19027.

11 7. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
12 1692a(3).

13
14 8. Defendant is a national debt collection company with its corporate
15 headquarters located at 507 Prudential Road, Horsham, Pennsylvania, 19044-
16 2308.

17
18 9. Defendant is a debt collector as that term is defined by 15 U.S.C. §
19 1692a(6), and sought to collect a consumer debt from Plaintiff.

20 10. Defendant acted through its agents, employees, officers, members,
21 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
22 representatives, and insurers.
23

PRELIMINARY STATEMENT

11. The Fair Debt Collection Practices Act ("FDCPA") is a comprehensive statute, which prohibits a catalog of activities in connection with the collection of debts by third parties. See 15 U.S.C. § 1692 *et seq.* The FDCPA imposes civil liability on any person or entity that violates its provisions, and establishes general standards of debt collector conduct, defines abuse, and provides for specific consumer rights. 15 U.S.C. § 1692k. The operative provisions of the FDCPA declare certain rights to be provided to or claimed by debtors, forbid deceitful and misleading practices, prohibit harassing and abusive tactics, and proscribe unfair or unconscionable conduct, both generally and in a specific list of disapproved practices.

12. In particular, the FDCPA broadly enumerates several practices considered contrary to its stated purpose, and forbids debt collectors from taking such action. The substantive heart of the FDCPA lies in three broad prohibitions. First, a “debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” 15 U.S.C. § 1692d. Second, a “debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt.” 15 U.S.C. § 1692e. And third, a “debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.” 15 U.S.C. §

1 1692f. The FDCPA is designed to protect consumers from unscrupulous
2 collectors, whether or not there exists a valid debt, broadly prohibits unfair or
3 unconscionable collection methods, conduct which harasses, oppresses or abuses
4 any debtor, and any false, deceptive or misleading statements in connection with
5 the collection of a debt.
6

7 13. In enacting the FDCPA, the United States Congress found that “[t]here
8 is abundant evidence of the use of abusive, deceptive, and unfair debt collection
9 practices by many debt collectors,” which “contribute to the number of personal
10 bankruptcies, to marital instability, to the loss of jobs, and to invasions of
11 individual privacy.” 15 U.S.C. § 1692a. Congress additionally found existing
12 laws and procedures for redressing debt collection injuries to be inadequate to
13 protect consumers. 15 U.S.C. § 1692b.
14

15 14. Congress enacted the FDCPA to regulate the collection of consumer
16 debts by debt collectors. The express purposes of the FDCPA are to “eliminate
17 abusive debt collection practices by debt collectors, to insure that debt collectors
18 who refrain from using abusive debt collection practices are not competitively
19 disadvantaged, and to promote consistent State action to protect consumers against
20 debt collection abuses.” 15 U.S.C. § 1692e.
21
22

23 **FACTUAL ALLEGATIONS**

24 15. At all pertinent times hereto, Defendant was hired to collect two
25

1 separate consumer debts allegedly owed by Plaintiff and attempted to collect those
2 debts from Plaintiff.

3
4 16. The alleged debts at issue arose out of transactions, which were
5 primarily for personal, family, or household purposes.

6 17. Specifically, Defendant was attempting to collect a debt in the amount
7 of \$406.00 from Plaintiff on behalf of TD Bank.

8
9 18. Plaintiff disputed owing any debt to TD Bank, having signed an
10 affidavit for TD Bank explaining that she had a zero balance and any subsequent
11 charges on the account were made by another individual without her authorization.

12
13 19. Also, Defendant was attempting to collect a debt in the amount of
14 \$336.00 from Plaintiff on behalf of DirectTV.

15 20. Plaintiff disputed owing any debt to DirectTV, as any charges on the
16 account occurred after she had moved and DirectTV failed to cancel the service.

17
18 21. Beginning in October 2010, Defendant constantly and continuously
19 placed collection calls to Plaintiff's home and cellular telephone numbers seeking
20 and demanding payment for the alleged debts.

21
22 22. On average, Defendant contacted Plaintiff on her home and cellular
23 telephones at least two (2) times a day.

24 23. In addition, Defendant would leave Plaintiff voice mail messages
25 claiming that it was urgent that Plaintiff return its calls.

1 24. On or about November 26, 2010, Defendant placed a collection call to
2 Plaintiff and spoke with Plaintiff's son.

3 25. Defendant refused to allow Plaintiff's son take a message, instead
4 keeping him on the phone demanding responses to its questions.

5 26. In addition to calling Plaintiff, Defendant constantly and continuously
6 placed calls to Plaintiff's mother once a week for two months asking to speak with
7 Plaintiff.
8

9 27. On numerous occasions, Plaintiff's mother advised Defendant that
10 Plaintiff did not live with her and to stop calling.
11

12 28. However, Defendant ignored Plaintiff's mother's instructions and
13 continued to contact her in its attempts to collect a debt from Plaintiff.
14

15 29. On or about December 6, 2010, Plaintiff viewed her credit report and
16 learned that Defendant had reported the disputed debts on her credit report. See
17 Plaintiff's credit report attached hereto as "Exhibit A."
18

19 30. Upon information and belief, Defendant failed to send Plaintiff
20 written notification informing her of her rights to dispute the debts and/or request
21 verification of the debts.
22

23 31. Defendant conducted its debt collection activities in ways that were
24 factually misrepresented and in violation of the FDCPA.
25

CONSTRUCTION OF APPLICABLE LAW

32. The FDCPA is a strict liability statute. Taylor v. Perrin, Landry, deLaunay & Durand, 103 F.3d 1232 (5th Cir. 1997). “Because the Act imposes strict liability, a consumer need not show intentional conduct by the debt collector to be entitled to damages.” Russell v. Equifax A.R.S., 74 F. 3d 30 (2d Cir. 1996); see also Gearing v. Check Brokerage Corp., 233 F.3d 469 (7th Cir. 2000) (holding unintentional misrepresentation of debt collector’s legal status violated FDCPA); Clomon v. Jackson, 988 F. 2d 1314 (2d Cir. 1993).

33. The FDCPA is a remedial statute, and therefore must be construed liberally in favor of the debtor. Sprinkle v. SB&C Ltd., 472 F. Supp. 2d 1235 (W.D. Wash. 2006). The remedial nature of the FDCPA requires that courts interpret it liberally. Clark v. Capital Credit & Collection Services, Inc., 460 F. 3d 1162 (9th Cir. 2006). “Because the FDCPA, like the Truth in Lending Act (TILA) 15 U.S.C §1601 *et seq.*, is a remedial statute, it should be construed liberally in favor of the consumer.” Johnson v. Riddle, 305 F. 3d 1107 (10th Cir. 2002).

34. The FDCPA is to be interpreted in accordance with the “least sophisticated” consumer standard. See Jeter v. Credit Bureau, Inc., 760 F.2d 1168 (11th Cir. 1985); Graziano v. Harrison, 950 F. 2d 107 (3rd Cir. 1991); Swanson v. Southern Oregon Credit Service, Inc., 869 F.2d 1222 (9th Cir. 1988). The FDCPA was not “made for the protection of experts, but for the public - that vast multitude

1 which includes the ignorant, the unthinking, and the credulous, and the fact that a
2 false statement may be obviously false to those who are trained and experienced
3 does not change its character, nor take away its power to deceive others less
4 experienced.” Id. The least sophisticated consumer standard serves a dual
5 purpose in that it ensures protection of all consumers, even naive and trusting,
6 against deceptive collection practices, and protects collectors against liability for
7 bizarre or idiosyncratic interpretations of collection notices. Clomon, 988 F. 2d at
8 1318.
9
10

11 **COUNT I**
12 **DEFENDANT VIOLATED THE**
13 **FAIR DEBT COLLECTION PRACTICES ACT**

14 35. Defendant violated the FDCPA based on the following:

- 15 a. Defendant violated §1692 generally;
- 16 b. Defendant violated §1692b(3) of the FDCPA by communicating
17 with a third party more than once without permission to do so and
18 without believing that the earlier response was erroneous or
19 incomplete;
- 20 c. Defendant violated §1692d of the FDCPA by engaging in conduct
21 the natural consequence of which is to harass, oppress, or abuse
22 the Plaintiff in connection with the collection of a debt;
- 23 d. Defendant violated §1692d(5) of the FDCPA by causing a
24
25

1 telephone to ring and engaging Plaintiff in telephone conversations
2 repeatedly and continuously with the intent to annoy, abuse or
3 harass;
4

5 e. Defendant violated §1692e of the FDCPA by using false,
6 deceptive, or misleading representations or means in connection
7 with the collection of a debt;
8

9 f. Defendant violated §1692f of the FDCPA by using unfair and
10 unconscionable means with Plaintiff to collect or attempt to collect
11 a debt; and
12

13 g. Defendant violated §1692g of the FDCPA by failing to send
14 written notification, within five (5) days after its initial
15 communication with Plaintiff, advising Plaintiff of her rights to
16 dispute the debt or request verification of the debt.
17

18 36. As a direct and proximate result of one or more or all of the statutory
19 violations above, Plaintiff has suffered emotional distress.

20 WHEREFORE, Plaintiff, CRYSTAL DUNSTON, respectfully requests
21 judgment be entered against Defendant, NCO FINANCIAL SYSTEMS, INC., for
22 the following:
23

24 a. Declaratory judgment that Defendant's conduct violated the Fair
25 Debt Collection Practices Act,


- b. Statutory damages pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k,
- c. Actual damages,
- d. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692k
- e. Any other relief that this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, CRYSTAL DUNSTON, demands a jury trial in this case.

DATED: 4/15/11

RESPECTFULLY SUBMITTED,
KIMMEL & SILVERMAN, P.C.

By: 
Craig Thor Kimmel
Attorney ID # 57100
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